U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VEDA J. CHARLESTON and U.S. POSTAL SERVICE,
MAIN POST OFFICE, Atlanta, Ga.

Docket No. 96-1218; Submitted on the Record;
Issued March 5, 1998

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant met her burden of proof in establishing that she sustained any disability in the performance of duty.

On July 12, 1994 appellant, then a 46-year-old postal clerk, filed a notice of traumatic injury, claiming that she injured her back on October 27, 1992 while lifting mail trays. Appellant claimed compensation from November 2, 1992 until the present.[1]

In support of her claim, appellant submitted a statement from Dr. John W. Ross, a general practitioner, indicating that he had treated appellant on November 10, 1992 for an acute lumbar sacral strain and that she had not returned to work as of July 7, 1994.

The employing establishment controverted the claim on the grounds that appellant had not filed her notice within 30 days of the injury and had submitted no medical evidence to support the occurrence of an injury. By letters dated August 10, 1994, the Office informed the employing establishment that the medical evidence established the occurrence of an injury in the performance of duty and informed appellant that she was not entitled to continuation of pay because her notice had not been filed within 30 days of the injury.[2]

Subsequently, appellant submitted two form reports, dated August 19 and October 25, 1994, from Dr. Ross who stated that appellant's back pain was due to the work injury, that she was undergoing physical therapy, that her prognosis was guarded, and that she was totally disabled for work. By letter dated November 14, 1994, the Office informed appellant that the

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[1] Appellant had initially filed a notice of recurrence of disability, claiming that the 1992 injury was a recurrence of an injury she sustained on October 29, 1986. By letter dated June 17, 1994, the Office of Workers' Compensation Programs advised appellant to file a CA-1 form for a new traumatic injury.

[2] *See Karen J. Meuller*, 48 ECAB ___ (Docket No. 95-464, issued October 17, 1996) (finding that appellant timely filed her notice of traumatic injury within the required 30 days).

form reports were insufficient to establish total disability and that she must submit medical notes showing her treatment and physical disability during the two-year period between the injury and the filing of her claim.

On March 28, 1995 the Office denied the claim on the grounds that the medical evidence failed to establish that appellant was disabled for work as a result of the 1992 injury. On October 31, 1995 appellant requested reconsideration on the grounds that she had submitted a narrative report from Dr. Ross in May 1995 after discovering that this letter had not been sent the previous year.

On December 7, 1995 the Office denied appellant's request on the grounds that she had neither submitted new and relevant evidence nor raised substantive legal arguments not previously considered in support of her reconsideration. Accordingly, the Office declined to review its prior decision.

The Board finds that appellant has failed to meet her burden of proof in establishing that she sustained any disability from her work-related injury.

An employee seeking benefits under the Federal Employees' Compensation Act[3] has the burden of establishing the essential elements of his or her claim including the fact that the individual is an employee of the United States within the meaning of the Act, that the claim was filed within the applicable time limitation of the Act, that an injury was sustained in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.[4] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.[5]

In a claim for compensation based on a traumatic injury, the employee must establish fact of injury by submitting proof that he or she actually experienced the employment accident or event in the performance of duty and that such accident or event caused an injury as defined in the Act and its regulations.[6] The Office's regulations define traumatic injury as a wound or other condition of the body caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected.[7] The injury must be caused by a specific event or incident or series of events of incidents within a single workday or shift.[8]

[3] 5 U.S.C. §§ 8101-8193 (1974).

[4] *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

[5] *Id.*

[6] *Gene A. McCracken*, 46 ECAB 593 (1995).

[7] 20 C.F.R. § 10.5(15).

[8] *Richard D. Wray*, 45 ECAB 758, 762 (1994).

In determining whether an employee sustained an injury in the performance of his duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components considered in conjunction with one another.[9] The first component to be established is that the employee actually experienced the employment incident at the time, place, and manner alleged. In some cases, this first component can be established by an employee's uncontroverted statement that is consistent with the surrounding facts and circumstances and his subsequent course of action.[10] The second component, whether the employment incident caused a personal injury, generally must be established by medical evidence.[11]

In this case, the Office accepted the fact that an injury had occurred on October 27, 1992 but informed appellant that she had to submit medical evidence showing how she was disabled to perform the duties of her job from November 1992 to the present. The Office explained that treatment notes during that period and a narrative medical report were necessary to substantiate her disability for work. While appellant stated on reconsideration that Dr. Ross' office had sent such a report, the record contains no rationalized medical opinion from him.[12]

Appellant argues on appeal that the requested medical evidence was sent to the Office on May 8 and August 18, 1995, but the only documents in the record dated in 1995 are the charges submitted by Dr. Ross for appellant's therapy in 1994 through 1995. The fact that the Office paid Dr. Ross for appellant's treatment is not relevant to the issue of whether appellant has established total disability for work.[13]

[9] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2(a), (June 1995); *see Elaine Pendleton*, 40 ECAB 1143, 1147 (1989).

[10] *Edgar L. Colley*, 34 ECAB 1691, 1695 (1983).

[11] *John J. Carlone*, 41 ECAB 354, 357 (1989). Every injury does not necessarily cause disability for employment. *Donald Johnson*, 44 ECAB 540, 551 (1993). Whether a particular injury causes disability for employment is a medical issue which must be resolved by competent medical evidence. *Debra A. Kirk-Littleton*, 41 ECAB 703, 706 (1990).

[12] *See Alberta S. Williamson*, 47 ECAB ___ (Docket No. 94-1762, issued May 7, 1996) (finding that appellant failed to submit a rationalized medical report based on a complete factual and medical background explaining why her condition was contracted in the performance of duty).

[13] *See Carolyn F. Allen*, 47 ECAB ___ (Docket No. 94-828, issued December 7, 1995) (finding that payment of medical expenses does not constitute acceptance of a claim).

The form reports indicated that appellant was totally disabled due to the work injury, but provide no rationale for these conclusions.[14] The record evidence is insufficient to support appellant's claim for disability resulting from the work injury, the Board finds that the Office properly denied her claim.

The December 7 and March 28, 1995 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, D.C.
March 5, 1998

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

[14] *See Ruth S.* Johnson, 46 ECAB 237 (1994) (finding that a physician's opinion on causal relationship that consists only of checking "yes" to form questions has little probative value).